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**United States Code Service - Titles 1 through 54 TITLE 33. NAVIGATION AND
NAVIGABLE WATERS CHAPTER 26. WATER POLLUTION PREVENTION AND
CONTROL STANDARDS AND ENFORCEMENT**

§ 1330. National Estuary program

(a) Management conference.

(1) Nomination of estuaries. The Governor of any State may nominate to the Administrator an estuary lying in whole or in part within the State as an estuary of national significance and request a management conference to develop a comprehensive management plan for the estuary. The nomination shall document the need for the conference, the likelihood of success, and information relating to the factors in paragraph (2).

(2) Convening of conference.

(A) In general. In any case where the Administrator determines, on his own initiative or upon nomination of a State under paragraph (1), that the attainment or maintenance of that water quality in an estuary which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife, and allows recreational activities, in and on the water, requires the control of point and nonpoint sources of pollution to supplement existing controls of pollution in more than one State, the Administrator shall select such estuary and convene a management conference.

(B) Priority consideration. The Administrator shall give priority consideration under this section to Long Island Sound, New York and Connecticut; Narragansett

Bay, Rhode Island; Buzzards Bay, Massachusetts; Massachusetts Bay, Massachusetts (including Cape Cod Bay and Boston Harbor); Puget Sound, Washington; New York-New Jersey Harbor, New York and New Jersey; Delaware Bay, Delaware and New Jersey; Delaware Inland Bays, Delaware; Albemarle Sound, North Carolina; Sarasota Bay, Florida; San Francisco Bay, California; Santa Monica Bay, California; Galveston Bay, Texas; Barataria-Terrebonne Bay estuary complex, Louisiana; Indian River Lagoon, Florida; Lake Pontchartrain Basin, Louisiana and Mississippi; and Peconic Bay, New York.

(3) Boundary dispute exception. In any case in which a boundary between two States passes through an estuary and such boundary is disputed and is the subject of an action in any court, the Administrator shall not convene a management conference with respect to such estuary before a final adjudication has been made of such dispute.

(b) Purposes of conference. The purposes of any management conference convened with respect to an estuary under this subsection shall be to--

- (1)** assess trends in water quality, natural resources, and uses of the estuary;
- (2)** collect, characterize, and assess data on toxics, nutrients, and natural resources within the estuarine zone to identify the causes of environmental problems;
- (3)** develop the relationship between the in-place loads and point and nonpoint loadings of pollutants to the estuarine zone and the potential uses of the zone, water quality, and natural resources;
- (4)** develop a comprehensive conservation and management plan that recommends priority corrective actions and compliance schedules addressing point and nonpoint sources of pollution to restore and maintain the chemical, physical, and biological integrity of the estuary, including restoration and maintenance of water quality, a balanced indigenous population of shellfish, fish and wildlife, and recreational activities in the estuary, and assure that the designated uses of the estuary are protected;
- (5)** develop plans for the coordinated implementation of the plan by the States as well as Federal and local agencies participating in the conference;
- (6)** monitor the effectiveness of actions taken pursuant to the plan; and
- (7)** review all Federal financial assistance programs and Federal development projects in accordance with the requirements of Executive Order 12372 [31 USCS § 6506 note], as in effect on September 17, 1983, to determine whether such assistance program or project would be consistent with and further the purposes and objectives of the plan prepared under this section.

For purposes of paragraph (7), such programs and projects shall not be limited to the assistance programs and development projects subject to Executive Order 12372 [31

USCS § 6506 note], but may include any programs listed in the most recent Catalog of Federal Domestic Assistance which may have an effect on the purposes and objectives of the plan developed under this section.

(c) Members of conference. The members of a management conference convened under this section shall include, at a minimum, the Administrator and representatives of--

- (1)** each State and foreign nation located in whole or in part in the estuarine zone of the estuary for which the conference is convened;
- (2)** international, interstate, or regional agencies or entities having jurisdiction over all or a significant part of the estuary;
- (3)** each interested Federal agency, as determined appropriate by the Administrator;
- (4)** local governments having jurisdiction over any land or water within the estuarine zone, as determined appropriate by the Administrator; and
- (5)** affected industries, public and private educational institutions, and the general public, as determined appropriate by the Administrator.

(d) Utilization of existing data. In developing a conservation and management plan under this section, the management conference shall survey and utilize existing reports, data, and studies relating to the estuary that have been developed by or made available to Federal, interstate, State, and local agencies.

(e) Period of conference. A management conference convened under this section shall be convened for a period not to exceed 5 years. Such conference may be extended by the Administrator, and if terminated after the initial period, may be reconvened by the Administrator at any time thereafter, as may be necessary to meet the requirements of this section.

(f) Approval and implementation of plans.

(1) Approval. Not later than 120 days after the completion of a conservation and management plan and after providing for public review and comment, the Administrator shall approve such plan if the plan meets the requirements of this section and the affected Governor or Governors concur.

(2) Implementation. Upon approval of a conservation and management plan under this section, such plan shall be implemented. Funds authorized to be appropriated under titles II and VI and section 319 of this Act [33 USCS §§ 1281 et seq., 1381 et seq., 1329] may be used in accordance with the applicable requirements of this Act [33 USCS §§ 1251 et seq.] to assist States with the implementation of such plan.

(g) Grants.

(1) Recipients. The Administrator is authorized to make grants to State, interstate, and regional water pollution control agencies and entities, State coastal zone

management agencies, interstate agencies, other public or nonprofit private agencies, institutions, organizations, and individuals.

(2) Purposes. Grants under this subsection shall be made to pay for activities necessary for the development and implementation of a comprehensive conservation and management plan under this section.


(3) Federal share. The Federal share of a grant to any person (including a State, interstate, or regional agency or entity) under this subsection for a fiscal year--

(A) shall not exceed--

(i) 75 percent of the annual aggregate costs of the development of a comprehensive conservation and management plan; and

(ii) 50 percent of the annual aggregate costs of the implementation of the plan; and

(B) shall be made on condition that the non-Federal share of the costs are provided from non-Federal sources.

 **(4) Competitive awards.**

(A) In general. Using the amounts made available under subsection (i)(2)(B), the Administrator shall make competitive awards under this paragraph.

(B) Application for awards. The Administrator shall solicit applications for awards under this paragraph from State, interstate, and regional water pollution control agencies and entities, State coastal zone management agencies, interstate agencies, other public or nonprofit private agencies, institutions, organizations, and individuals.

(C) Selection of recipients. In selecting award recipients under this paragraph, the Administrator shall select recipients that are best able to address urgent and challenging issues that threaten the ecological and economic well-being of coastal areas. Such issues shall include--

(i) extensive seagrass habitat losses resulting in significant impacts on fisheries and water quality;

(ii) recurring harmful algae blooms;

(iii) unusual marine mammal mortalities;

(iv) invasive exotic species that may threaten wastewater systems and cause other damage;

(v) jellyfish proliferation limiting community access to water during peak tourism seasons;

(vi) flooding that may be related to sea level rise or wetland degradation or loss; and

(vii) low dissolved oxygen conditions in estuarine waters and related nutrient management.

(h) Grant reporting. Any person (including a State, interstate, or regional agency or entity) that receives a grant under subsection (g) shall report to the Administrator not later than 18 months after receipt of such grant and biennially thereafter on the progress being made under this section.

(i) Authorization of appropriations.

(1) In general. There is authorized to be appropriated to the Administrator \$ 26,500,000 for each of fiscal years 2017 through 2021 for--

(A) expenses relating to the administration of grants or awards by the Administrator under this section, including the award and oversight of grants and awards, except that such expenses may not exceed 5 percent of the amount appropriated under this subsection for a fiscal year; and

(B) making grants and awards under subsection (g).

(2) Allocations.

(A) Conservation and management plans. Not less than 80 percent of the amount made available under this subsection for a fiscal year shall be used by the Administrator to provide grant assistance for the development, implementation, and monitoring of each of the conservation and management plans eligible for grant assistance under subsection (g)(2).

(B) Competitive awards. Not less than 15 percent of the amount made available under this subsection for a fiscal year shall be used by the Administrator for making competitive awards described in subsection (g)(4).

(j) Research.

(1) Programs. In order to determine the need to convene a management conference under this section or at the request of such a management conference, the Administrator shall coordinate and implement, through the National Marine Pollution Program Office and the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration, as appropriate, for one or more estuarine zones--

(A) a long-term program of trend assessment monitoring measuring variations in pollutant concentrations, marine ecology, and other physical or biological environmental parameters which may affect estuarine zones, to provide the Administrator the capacity to determine the potential and actual effects of alternative management strategies and measures;

(B) a program of ecosystem assessment assisting in the development of (i) baseline studies which determine the state of estuarine zones and the effects of natural and anthropogenic changes, and (ii) predictive models capable of translating information on specific discharges or general pollutant loadings within estuarine zones into a set of probable effects on such zones;

(C) a comprehensive water quality sampling program for the continuous monitoring of nutrients, chlorine, acid precipitation dissolved oxygen, and potentially toxic pollutants (including organic chemicals and metals) in estuarine zones, after consultation with interested State, local, interstate, or international agencies and review and analysis of all environmental sampling data presently collected from estuarine zones; and

(D) a program of research to identify the movements of nutrients, sediments and pollutants through estuarine zones and the impact of nutrients, sediments, and pollutants on water quality, the ecosystem, and designated or potential uses of the estuarine zones.

(2) Reports. The Administrator, in cooperation with the Administrator of the National Oceanic and Atmospheric Administration, shall submit to the Congress no less often than biennially a comprehensive report on the activities authorized under this subsection including--

(A) a listing of priority monitoring and research needs;

(B) an assessment of the state and health of the Nation's estuarine zones, to the extent evaluated under this subsection;

(C) a discussion of pollution problems and trends in pollutant concentrations with a direct or indirect effect on water quality, the ecosystem, and designated or potential uses of each estuarine zone, to the extent evaluated under this subsection; and

(D) an evaluation of pollution abatement activities and management measures so far implemented to determine the degree of improvement toward the objectives expressed in subsection (b)(4) of this section.

(k) Definitions. For purposes of this section, the terms "estuary" and "estuarine zone" have the meanings such terms have in section 104(n)(4) of this Act [33 USCS § 1254(n)(4)], except that the term "estuarine zone" shall also include associated aquatic ecosystems and those portions of tributaries draining into the estuary up to the historic height of migration of anadromous fish or the historic head of tidal influence, whichever is higher.

History

(June 30, 1948, ch 758, Title III, § 320, as added Feb. 4, 1987, P.L. 100-4, Title III, § 317 (a), 101 Stat. 61; Dec. 22, 1987, P.L. 100-202, § 101(f) [Title II], 101 Stat. 1329-197; Nov. 14, 1988, P.L. 100-653, Title X, § 1004, 102 Stat. 3836; Nov. 18, 1988, P.L. 100-688, Title II, § 2001, 102 Stat. 4151; Nov. 10, 1998, P.L. 105-362, Title V, § 501(a)(2), 112 Stat. 3283; Nov. 7, 2000, P.L. 106-457, Title III, §§ 301-303, 114 Stat. 1972; Nov. 27, 2002, P.L. 107-303, Title III, § 302(b)(1), 116 Stat. 2361; Oct. 30, 2004, P.L. 108-399, § 1, 118 Stat. 2253.)

(As amended May 20, 2016, P.L. 114-162, §§ 1, 2, 130 Stat. 409.)

▼ Annotations

Notes

Amendments:

1987 . Act Dec. 22, 1987, in subsec. (a)(2)(B), inserted "Santa Monica Bay, California;"

1988 . Act Nov. 14, 1988, in subsec. (a)(2)(B), inserted "Massachusetts Bay, Massachusetts (including Cape Cod Bay and Boston Harbor);"

Act Nov. 18, 1988, in subsec. (a)(2)(B), purported to insert "Massachusetts Bay, Massachusetts (including Cape Cod Bay and Boston Harbor);", however, an identical amendment was made by Act Nov. 14, 1988.

Such Act further, in subsec. (a)(2)(B), deleted "and" preceding "Galveston Bay, Texas".

Such Act further purported to amend subsec. (a)(2)(B) by inserting "; Barataria-Terrebonne Bay estuary complex, Louisiana; Indian River Lagoon, Florida; and Peconic Bay, New York" following "Galveston Bay, Texas;"; however, such insertion was made following "Galveston Bay, Texas" in order to effectuate the probable intent of Congress.

1998 . Act Nov. 10, 1998, in subsec. (k), substituted "section 104(n)(3)" for "section 104(n)(4)". This amendment was stricken by Act Nov. 27, 2002 (effective 11/10/1998, as provided by § 302(b)(1) of such Act), which further provided that the Federal Water Pollution Control Act shall be applied and administered as if the amendment had not been enacted.

2000 . Act Nov. 7, 2000, in subsec. (a)(2)(B), inserted "Lake Pontchartrain Basin, Louisiana and Mississippi;"; in subsec. (g), substituted paras. (2) and (3) for ones which read:

"(2) Purposes. Grants under this subsection shall be made to pay for assisting research, surveys, studies, and modeling and other technical work necessary for the development of a conservation and management plan under this section.

"(3) Federal share. The amount of grants to any person (including a State, interstate, or regional agency or entity) under this subsection for a fiscal year shall not exceed 75 percent of the costs of such research, survey, studies, and work and shall be made on condition that the non-Federal share of such costs are provided from non-Federal sources.";

and, in subsec. (i), substituted "\$ 35,000,000 for each of fiscal years 2001 through 2005" for "\$ 12,000,000 per fiscal year for each of fiscal years 1987, 1988, 1989, 1990, and 1991".

2002 . Act Nov. 27, 2002 (effective 11/10/1998, as provided by § 302(b)(1) of such Act, and applicable as provided by § 303(b)(2) of such Act, which appears as 33 USCS § 1254 note), amended Act Nov. 10, 1998, which amended this section.

2004 . Act Oct. 30, 2004, in subsec. (i), substituted "2010" for "2005".

2016 . Act May 20, 2016, in subsec. (g), added para. (4); and substituted subsec. (i) for one which read:

"(i) Authorization of appropriations. There are authorized to be appropriated to the Administrator not to exceed \$ 35,000,000 for each of fiscal years 2001 through 2010 for--

"(1) expenses related to the administration of management conferences under this section, not to exceed 10 percent of the amount appropriated under this subsection;

"(2) making grants under subsection (g); and

"(3) monitoring the implementation of a conservation and management plan by the management conference or by the Administrator, in any case in which the conference has been terminated.

"The Administrator shall provide up to \$ 5,000,000 per fiscal year of the sums authorized to be appropriated under this subsection to the Administrator of the National Oceanic and Atmospheric Administration to carry out subsection (j).".

Other provisions:

Act Feb. 4, 1987; purposes and policies. Act Feb. 4, 1987, P.L. 100-4, Title III, § 317(a), 101 Stat. 61, provides:

"(1) Findings. Congress finds and declares that--

"(A) the Nation's estuaries are of great importance for fish and wildlife resources and recreation and economic opportunity;

"(B) maintaining the health and ecological integrity of these estuaries is in the national interest;

"(C) increasing coastal population, development, and other direct and indirect uses of these estuaries threaten their health and ecological integrity;

"(D) long-term planning and management will contribute to the continued productivity of these areas, and will maximize their utility to the Nation; and

"(E) better coordination among Federal and State programs affecting estuaries will increase the effectiveness and efficiency of the national effort to protect, preserve, and restore these areas.

"(2) Purposes. The purposes of this section are to--

"(A) identify nationally significant estuaries that are threatened by pollution, development, or overuse;

"(B) promote comprehensive planning for, and conservation and management of, nationally significant estuaries;

"(C) encourage the preparation of management plans for estuaries of national significance; and

"(D) enhance the coordination of estuarine research."

Act Nov. 14, 1988; definition. Act Nov. 14, 1988, P.L. 100-653, Title X, § 1002, 102 Stat. 3835, provides: "For purposes of this title [amending this section and appearing in part as notes to this section and 33 USCS § 1251], the term 'Massachusetts Bay' includes Massachusetts Bay, Cape Cod Bay, and Boston Harbor, consisting of an area extending from Cape Ann, Massachusetts south to the northern reach of Cape Cod, Massachusetts."

Act Nov. 14, 1988; purposes and policies. Act Nov. 14, 1988, Title X, § 1003, 102 Stat. 3835, provides:

"(a) Findings. The Congress finds and declares that--

"(1) Massachusetts Bay comprises a single major estuarine and oceanographic system extending from Cape Ann, Massachusetts south to the northern reaches of Cape Cod, encompassing Boston Harbor, Massachusetts Bay, and Cape Cod Bay;

"(2) several major riverine systems, including the Charles, Neponset, and Mystic Rivers, drain the watersheds of eastern Massachusetts into the Bay;

"(3) the shorelines of Massachusetts Bay, first occupied in the middle 1600's, are home to over 4 million people and support a thriving industrial and recreational economy;

"(4) Massachusetts Bay supports important commercial fisheries, including lobsters, finfish, and shellfisheries, and is home to or frequented by several endangered species and marine mammals;

"(5) Massachusetts Bay also constitutes an important recreational resource, providing fishing, swimming, and boating opportunities to the region;

"(6) rapidly expanding coastal populations and pollution pose increasing threats to the long-term health and integrity of Massachusetts Bay;

"(7) while the cleanup of Boston Harbor will contribute significantly to improving the overall environmental quality of Massachusetts Bay, expanded efforts encompassing the entire ecosystem will be necessary to ensure its long-term health;

"(8) the concerted efforts of all levels of Government, the private sector, and the public at large will be necessary to protect and enhance the environmental integrity of Massachusetts Bay; and

"(9) the designation of Massachusetts Bay as an Estuary of National Significance and the development of a comprehensive plan for protecting and restoring the Bay may contribute significantly to its long-term health and environmental integrity.

"(b) Purpose. The purpose of this title is to protect and enhance the environmental quality of Massachusetts Bay by providing for its designation as an Estuary of National Significance and by providing for the preparation of a comprehensive restoration plan for the Bay."

Sources of funding. Act Nov. 14, 1988, P.L. 100-653, Title X, § 1005, 102 Stat. 3836, provides: "Within one year of enactment, the Administrator of the United States Environmental Protection Agency and the Governor of Massachusetts shall undertake to identify and make available sources of funding to support activities pertaining to Massachusetts Bay undertaken pursuant to or authorized by section 320 of the Clean Water Act [33 USCS § 1330], and shall make every effort to coordinate existing research, monitoring or control efforts with such activities."

Exemption from termination of reporting requirements. Reporting requirement of subsec. (j)(2) of this section was excepted from termination under Act Dec. 21, 1995, P.L. 104-66, § 3003(a)(1), which appears as 31 USCS § 1113 note, by Act Nov. 27, 2002, P.L. 107-303, Title III, § 302(a), which also appears as 31 USCS § 1113 note.

Research References & Practice Aids

Code of Federal Regulations:

Environmental Protection Agency--OMB approvals under the Paperwork Reduction Act, 40 CFR 9.1 et seq.

Environmental Protection Agency--Concentrated aquatic animal production point source category, 40 CFR 451.1 et seq.

Related Statutes & Rules:

This section is referred to in 16 USCS §§ 1447c, 1455b; 33 USCS §§ 1269, 1270, 1273, 1285, 1381, 1383, 1386, 1414b, 2902; 42 USCS § 7412.

Texts:

2 Environmental Law Practice Guide (Matthew Bender), ch 9A, Government Financing § 9A.02.

2 Treatise on Environmental Law (Matthew Bender), ch 3, Water Pollution § 3.03.

5 Treatise on Environmental Law (Matthew Bender), ch 10, Land Use Planning and Land Use Controls in the Context of Environmental Protection § 10.04.

Law Review Articles:

Crane. State Authority in Siting of Liquefied Natural Gas Import Terminals. 14 Buff Env'tl LJ 1, Fall 2006.

Craig. Legal Remedies for Deep Marine Oil Spills and Long-Term Ecological Resilience: A Match Made in Hell. 2011 BYUL Rev 1863, 2011.

Singarella; Campopiano. The Role of Economics in Environmental, Health, and Safety Regulation after Entergy. 35 Environs Env'tl L & Pol'y J 101, Fall 2011.

Latham; Schwartz; Appel. The Intersection of Tort and Environmental Law: Where the Twains Should Meet and Depart. 80 Fordham L Rev 737, November 2011.

Titus. Does The Us. Government Realize That The Sea Is Rising? How To Restructure Federal Programs So That Wetlands And Beaches Survive. 30 Golden Gate UL Rev 717, Spring 2000 .

Babcock. Dual Regulation, Collaborative Management, or Layered Federalism: Can Cooperative Federalism Models from Other Laws Save our Public Lands? 14 Hastings W.-NW J Env L & Pol'y 449, Winter 2008.

Husband. "Knowing endangerment" under the Clean Water Act and the Resource Conservation and Recovery Act: be aware of this toxic crime. 31 NH BJ 89, 1990.

Lozeau. Preliminary injunctions and the Federal Water Pollution Control Act: the clean water permit program as a limitation on the courts' equitable discretion. 42 Rutgers L Rev 701, 1990.

Chalos; Parker. The Criminalization of Maritime Accidents and Marpol Violations in the United States. 23 USF Mar LJ 206, Fall 2011.

Baur; Irvin; Misenko. Symposium: Changing Tides In Ocean Management: Putting "Protection" Into Marine Protected Areas. 28 Vt L Rev 497, Spring 2004 .

